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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM, 1962

No. 474

JOHNNY G. SPAHOS, EMORY C. BOBO, T. R. COLE, ALEXANDER P. SOLOMON, III, LABON F. HODGES, H. H. O'BRIEN, HENRY H. GLISSON, ROBERT T. BEELAND, B. TAYLOR SMITH, REGAL B. CONCEPCION, T. S. CHU, E. H. SMART, JOE HAWKINS, C. H. COBB, WILLIAM D. SMITH AND MILLEDGE C. JONES,

Appellants,

versus

THE MAYOR AND COUNCILMEN OF THE TOWN OF SAVANNAH BEACH, TYBEE ISLAND, GEORGIA, A MUNICIPAL CORPORATION, HENRY M. BUCKLEY, CLERK OF COUNCIL, J. A. BROWN, MAYOR, WILLIAM S. LOVELL, ALEX MEDDIN, JOHN A. PETERS, BENNO P. HOSTI, JAMES H. POWERS AND ROBERT L. WATERS, COUNCILMEN, AND WILLIAM C. FLEETWOOD, COUNCILMAN-ELECT, AND CHARLES M. DEBELE, E. A. LEONARD AND DR. WILLIAM WEICHSELBAUM, JR., BOARD OF REGISTRARS OF CHATHAM COUNTY, GEORGIA,

Appellees.

MOTION TO DISMISS OR AFFIRM

ANTON F. SOLMS, JR.,
Suite 820 Realty Building
Savannah, Georgia

IN THE

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Appellees.

On Appeal from the United States District Court for the Southern District of Georgia, Savannah Division

MOTION TO DISMISS OR AFFIRM.

Appellees move the Court to dismiss the appeal herein on the ground hereinafter set forth, or to affirm the judgment sought to be reviewed on the appeal on the ground that it is manifest that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

JURISDICTION

While the Supreme Court of the United States has jurisdiction to review the decision rendered by the specially convened three-judge District Court (*Title* 28, U.S.C.A., § 1253). Appellees respectfully submit that in the exercise of sound judicial discretion the United States Supreme Court should deny review since the decision of the three-judge court does not involve a federal substantive question not heretofore decided by this Court nor was such decision discordant with applicable decisions of this Court.

QUESTIONS FOR DECISION UPON MOTION TO DISMISS OR AFFIRM

1.

Whether or not this Court should accept jurisdiction in this case when the same question was previously ruled on by this Court and a finding made of want of a substantial federal question. (See *Bobo v. Mayor and Councilmen of the Town of Savannah Beach*, 364 U. S. 339, 81 S. Ct. 181, 5 L. Ed. 2d 185 (1960).

2.

Whether or not the so-called "stranglehold" situation deemed present in *Baker v. Carr*, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 633 (1962) is present in this case where there is no State constitutional prohibition against granting suffrage to non-resident voters who own property in a municipality.

3.

Whether or not the State has the power to classify voters into the classifications of residents on one hand and non-resident property owners on the other.

REASONS FOR DISMISSING APPEAL OR AFFIRMING JUDGMENT OF LOWER COURT

POINT ONE

THIS APPEAL SHOULD BE DENIED FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION

In 1938, the Supreme Court of Georgia, in the cases of *Harris v. McMillan*, 186 Ga. 529, 198 S. E. 250, and *Sharpley v. Fitzgerald*, 186 Ga. 536, 198 S. E. 255, upheld a municipal charter provision restricting the franchise to property owners and permitting non-resident property owners to vote in municipal elections.

In 1960, in the case of *Bobo v. Mayor and Councilmen of the Town of Savannah Beach, Tybee Island, Georgia*, 216 Ga. 12, 114 S. E. 2d 374, the Supreme Court of Georgia affirmed the dismissal by the lower court in a unanimous opinion reiterating the following portion of the holding in *Harris v. McMillan, supra:*

> "There is no requirement in our Constitution that there be uniformity in the charters of our municipalities . . . In so far as the powers and restrictions contained therein run counter to no constitutional provision, and no general law, they are valid.
>
> "The legislature had the power, in granting this charter, to permit persons residing without the municipality but owning real estate therein, but residing in the County of Chatham, to vote and hold office in such municipality, if otherwise qualified under the Constitution."

The Georgia Supreme Court further stated in the *Bobo* case:

> "There is also no merit in the contention that the provision in Tybee's charter which permits such non-resident

person to thus participate in the management of its municipal affairs offends the equal-protection clauses of the Federal Constitution (Code § 1-1813) and the Constitution of this State (Code § 2-193), on the ground that it dilutes the voting power of those who actually reside within the municipality and is therefore discriminatory class legislation. 'It is only in cases where laws are applied differently to different persons under the same or similar circumstances that the equal protection of the law is denied.' *Baugh v. City of LaGrange*, 161 Ga. 30 (2a) (130 S. E. 69); *City of Valdosta v. Harris*, 156 Ga. 490 (4) (119 S. E. 625)."

The plaintiff appealed to the Supreme Court of the United States which held: "The appeal is dismissed for want of a substantial federal question."

POINT TWO

There is no constitutional prohibition under the Constitution of Georgia against non-resident voters in a municipal election. There is no requirement in that Constitution that there be uniformity in the charters of Georgia municipalities. *See Harris v. McMillan* and *Bobo v. Mayor and Councilmen of the Town of Savannah Beach, supra.*

In *Baker v. Carr, supra*, plaintiffs were foreclosed from obtaining from the legislature what the Tennessee Constitution guaranteed to them.

The plaintiffs in the case at bar assert discrimination and claim that they are denied equal protection under the Fourteenth Amendment to the Federal Constitution. Discrimination must be invidious to become actionable. If there is any discrimination on the theory of allowing non-residents to vote in the municipality along with residents when such is not permitted by the charters of other municipalities in the county or state, there is no element of invidiousness if there is a reasonable

chance that political relief can be obtained. The legislative history in the case at bar reveals that throughout the years the charter of the Town of Savannah Beach has in fact changed and the relief sought by the plaintiffs was actually enacted into law by an Act of 1947 which was later ruled unconstitutional on other grounds (Petition, pp. 16-18).

POINT THREE

The challenged classification of voters is reasonable and equitable. In the general election on April 2, 1962, for the election of Mayor and Councilmen of Savannah Beach, Tybee Island, Georgia, a total of 992 persons were registered through December 26, 1961. Of said list of qualified voters, 549 were permanent residents of Savannah Beach and 443 were qualified by reason of (1) ownership of property within said municipality and (2) residence in Chatham County, Georgia.

A substantial majority of the non-resident property owners reside at Savannah Beach for a period of one to four months during the summer season and at other times during the year.

According to the tax digest of Savannah Beach as of May 1, 1962, the assessed value of property returned by non-resident property owners amounts to $2,852,040.00 and the assessed value of property returned by permanent residents of said municipality totals $1,586,185.00.

The property owners at Savannah Beach have a very real and vital interest in the conduct of the affairs of this resort municipality. The legislature of Georgia has recognized the existence of this interest by according them the right to vote and to representation on the Town Council. Until the General Assembly legislates otherwise, that right must be recognized by the Courts.

"Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits

the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practise, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan v. State of Maryland*, 366 U. S. 420, 425 f., 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1960).

Appellees herein respectfully submit that for the reasons asserted herein, This Honorable Court should dismiss the appeal herein or affirm the judgment sought to be reviewed.

Respectfully submitted,

ANTON F. SOLMS, JR.
Suite 820 Realty Building
Savannah, Georgia.
Attorney for Appellees

CERTIFICATE OF SERVICE

I hereby certify that I am attorney of record for the appellees in the within and foregoing matter, and,

I further certify that I have this day served a copy of the foregoing Motion to Dismiss the Appeal or Affirm the Judgment Sought to be Reviewed on the Appeal, on the Attorneys for the appellants, namely, Aaron Kravitch and Phyllis Kravitch, by mailing a copy of the same, properly addressed and with adequate postage attached, to their respective offices in Savannah, Georgia.

This 20th day of October 1962.

Attorney for Appellees